

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CYNTHIA L. CZUCHAJ, individually
and on behalf of all others similarly
situated, et al.,

Plaintiffs,

v.

CONAIR CORPORATION, a Delaware
corporation,

Defendant.

Case No.: 3:13-cv-01901-BEN-RBB

**ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND ENTERING
JUDGMENT**

On March 23, 2017, this Court heard Plaintiffs' Unopposed Motion for an Order Granting Final Approval of Class Action Settlement and Entering Judgment, and Motion for an Order Granting an Award of Attorneys' Fees, Litigation Costs and Class Representative Service Payments [Dkts. 357, 358].

Having received and considered the proposed Settlement, the supporting papers filed by the Parties, and the evidence and argument received by the Court in conjunction with this Motion [Dkts. 357, 358] and the Motion for Order Granting Preliminary Approval of Class Action Settlement [Dkt. 353, 354], the Court grants final approval of the Settlement and HEREBY ORDERS AND MAKES THE FOLLOWING

1 DETERMINATIONS:

2 1. The Settlement was preliminarily approved December 6, 2016. Dkt. 355.
 3 In accordance with this Court's Order Granting Plaintiffs' Motion for Preliminary
 4 Approval of Class Action Settlement filed December 6, 2016 [Dkt. 355], Class Members
 5 were given notice of the terms of the Settlement, of the manner in which to submit a
 6 valid claim, objection, or request for exclusion from the Settlement and the deadline to
 7 do any of these actions, and were informed of the date and place set for the Final
 8 Approval hearing.

9 2. The Court-approved Long-Form and Short (Summary) Form Class Notice
 10 and Claim Form were disseminated to the Class pursuant to the Court-approved Notice
 11 Plan to inform Class Members of their rights and benefits under the Settlement; how to
 12 obtain additional information about the Settlement; instructions for submitting a valid
 13 claim, objection, or request for exclusion; the deadline to take these actions; and the date
 14 and place of the Final Approval hearing. *Id.*, Dkt. 358-3, ¶¶ 6-8, pp. 16-25.¹

15 3. The Notice provided details on the amounts to be requested to be paid by
 16 Conair for Class Representative Service Payments and Class Counsels' attorneys' fees
 17 and litigation costs. Dkt. 358-3, p. 21, ¶ 17.

18 4. Following a National Change of Address database search of Class Member
 19 names and addresses supplied by Conair, on December 21, 2016, the Court-appointed
 20 administrator, Kurtzman Carson Consultants, LLC ("KCC"), formatted and mailed a
 21 Long Form Notice of Class Action Settlement and Claim Form ("Notice Packet") to
 22 25,022 members of the Class. Dkt. 358-3, ¶ 7. On the return of undelivered Notice
 23 Packets due to bad addresses, KCC undertook adequate measures to locate better
 24 addresses and re-mailed the Notice Packets. Dkt. 358-3, ¶¶ 9, 10.

25
 26
 27 ¹ At the Preliminary Approval hearing, the Court directed certain changes to the Class
 28 Notice submitted with the motion. Dkt. 354, pp. 48-61. The edited Class Notice was
 reviewed, signed, and filed with the Order Granting Preliminary Approval. Dkt. 355.

1 5. The Notice referenced the website name,
2 www.ConairClassActionSettlement.com, at which Class Members could view and
3 download the Settlement Agreement, the Preliminary Approval Order, and the Notice
4 and Claim Form. The website included a “Frequently Asked Questions” section for
5 answers to common questions, and directed individuals to call the Administrator at the
6 toll-free number for additional information and to request a Notice and Claim Form be
7 mailed to them. Dkt. 358-3, ¶¶ 12, 13.

8 6. On December 21, 2016, KCC sent the Short (Summary) Notice of the
9 Settlement by E-mail to 6,614 members of the Class for whom email addresses were
10 known. Dkt. 358-3, ¶ 8. If E-mailed notices bounced back, KCC mailed Notice Packets
11 to those Class Members. Dkt. 358-3, ¶ 9.

12 7. On January 9, 2017, KCC caused the Summary Notice to be published in
13 the *New York Times* and *Wall Street Journal*. KCC also caused the Summary Notice to
14 appear in the California and New York state editions of *Parade* newspaper supplements
15 in the January 15, 2017 issue, and to appear in the January 23, 2017 issue of the
16 California and New York state edition of *People* magazine. Dkt. 358-3, ¶ 11.

17 8. The Notice Plan included the use of internet banner ads directed to internet
18 users who were women 18 years of age or older in California and New York. For the
19 period from December 23, 2016 through January 23, 2017, KCC caused 15,069,310
20 impressions to be delivered. Dkt. 358-3, ¶ 11.

21 9. Additionally, to comply with the Class Action Fairness Act (“CAFA”),
22 KCC compiled a CD-ROM containing the following documents: Class Action
23 Complaint for Damages and Equitable Relief; First Amended Complaint for Damages
24 and Equitable Relief; Second Amended Complaint for Damages and Equitable Relief;
25 Conair Corporation’s Answer to Plaintiffs’ Second Amended Complaint; Plaintiffs’
26 Notice of Motion and Motion for an Order Granting Preliminary Approval of Class
27 Action Settlement, Points and Authorities in Support of Plaintiffs’ Motion for Order
28 Granting Preliminary Approval of Class Action Settlement, Declaration of Isam C.

1 Khoury in Support of Plaintiffs' Motion for an Order Granting Preliminary Approval of
2 Class Action Settlement, Declaration of Brian D. Chase in Support of Plaintiffs' Motion
3 for an Order Granting Preliminary Approval of Class Action Settlement, and Declaration
4 of Katherine J. Odenbreit in Support of Plaintiffs' Motion for an Order Granting
5 Preliminary Approval of Class Action Settlement; Claim Form; Publication Notice;
6 Long Form Notice; and Settlement Agreement, which accompanied a cover letter
7 (collectively, the "CAFA Notice Packet"). On November 22, 2016, KCC caused fifty-
8 nine (59) CAFA Notice Packets to be mailed to the U.S. Attorney General, the Attorneys
9 General of each of the fifty (50) states and the District of Columbia, the Attorneys
10 General of the five recognized U.S. Territories, as well as parties of interest to this
11 Action. Dkt. 358-3, ¶¶ 4-5.

12 10. In response to the Notice Plan and Class Notice,

13 a) 884 persons interested in the Settlement called the Administrator's
14 toll-free number. Dkt. 358-3, ¶ 12.

15 b) 134,562 hits were logged on the Settlement website. Dkt. 358-3, ¶
16 13.

17 c) 12 members of the Class, 3 in response to the Class Notice of
18 Settlement, and 9 in response to the earlier notice of class certification, requested
19 exclusion from the Class and Settlement. Dkt. 358-3, ¶ 14.

20 d) 1,738 Claim Forms, including 18 postmarked after the March 9, 2017
21 deadline, were received by KCC. Dkt. 359. Of the 1,736 processed, 431 were valid
22 claims, 4 for replacement Hair Dryers and 427 for an award of five dollars (\$5). 579
23 claims were deficient for various reasons for which deficiency letters and requests to
24 cure will be mailed by KCC, and 726 claims were denied for various reasons, such as a
25 purchase date outside of the Class Period, or the state of purchase was not California or
26 New York. *Id.*

27 e) No objections as to any term of the Settlement were filed and served
28 upon Counsel for the Parties by any person [Dkt. 358-2, ¶ 10], as directed by the Class

1 Notice [Dkt. 358-3, p. 22, ¶ 18] and as Ordered by the Court [Dkt. 355, ¶¶ 17-19].
2

3 11. The Court now finds and determines the Notice Plan and Class Notice
4 afforded adequate protections to Class Members and provides the basis for the Court to
5 make an informed decision regarding approval of the Settlement based on the response
6 of the Class. The Court finds and determines the Notice Plan and Class Notice provided
7 the best practicable notice, and satisfied the requirements of law and due process.

8 12. The Court hereby approves the terms set forth in the Settlement Agreement
9 and finds the Settlement is, in all respects, fair, adequate, and reasonable, and directs the
10 Parties to effectuate the Settlement according to its terms. The Court finds that the
11 Settlement was reached as a result of informed and non-collusive arms'-length
12 negotiations facilitated by a neutral mediator, the Hon. Leo Papas (Ret.). The Court
13 further finds that the Parties conducted extensive investigation, research, formal
14 discovery, and that their attorneys were able to reasonably evaluate their respective
15 positions. The Parties settled on the eve of trial, only after the case was fully
16 investigated by experienced counsel and ready to be heard by a jury. The Court also
17 finds that Settlement will enable the Parties to avoid additional and potentially
18 substantial litigation costs, as well as the significant delay and risks if the Parties were to
19 continue to litigate the case through trial, post-trial motions, and appeal.

20 13. The Court further finds and determines the terms of the Settlement are fair,
21 reasonable, and adequate to the Class and to each Class Member and the Settlement is
22 ordered finally approved, and all terms and provisions of the Settlement are ordered to
23 be consummated.

24 14. With respect to the Class and for purposes of approving this Settlement
25 only, this Court finds and concludes that: (a) the members of the Class are ascertainable
26 and so numerous that joinder of all members is impracticable; (b) there are questions of
27 law or fact common to the Settlement Class, and there is a well-defined community of
28 interest among members of the Settlement Class with respect to the subject matter of this
action; (c) the claims of Class Representatives, the Plaintiffs Cynthia L. Czuchaj and

1 Patricia Carter, are typical of the claims of the members of the Settlement Class; (d) the
2 Class Representatives have fairly and adequately protected the interests of the members
3 of the Settlement Class; (e) a class action is superior to other available methods for an
4 efficient adjudication of this controversy; and (f) counsel of record for the Class
5 Representatives, i.e., Class Counsel, are qualified to serve as counsel for Plaintiffs in
6 their individual and representative capacity for the Class.

7 15. The Court has certified a Class, as that term is defined in and by the terms
8 of the Settlement Agreement in Section I, paragraph 1.18, and the Court deems this
9 definition sufficient for purposes of Rule 23 of the Federal Rules of Civil Procedure.

10 16. The Court hereby confirms Odenbreit Law, APC, Cohelan, Khoury &
11 Singer, and Bisnar | Chase as Class Counsel.

12 17. The Court hereby confirms Plaintiffs Cynthia L. Czuchaj and Patricia
13 Carter as the Class Representatives in this action.

14 18. The Court finds and determines that the individual Settlement Payments to
15 be paid to participating Class Members (as validated by the Administrator) as provided
16 for by the Settlement are fair and reasonable. The Court hereby grants final approval to
17 and orders the payment of those amounts be made to the participating Class Members in
18 accordance with the terms of the Settlement Agreement.

19 **IT IS FURTHER ORDERED AS FOLLOWS:**

20 19. The Court finds Class Counsel, having conferred a benefit on absent Class
21 Members and having expended efforts to secure a benefit to the Class, is entitled to a fee
22 and, accordingly, the Court approves the application of Class Counsel of \$1,196,000 for
23 their attorneys' fees. This amount equals 60% of the lodestar figure.

24 20. The Court further finds Class Counsel's out-of-pocket litigation expenses of
25 \$231,000 are documented, reasonable, and necessary to the prosecution of this action.

26 21. The Court further finds third-party administration costs to KCC for its
27 services in connection with notice of class certification to the Class in the sum of
28 \$253,977.64 are documented, reasonable, and necessary.

1 22. The Court approves a Class Representative service payment to Cynthia
2 Czuchaj in the amount of \$10,000 for initiation of this action, work performed, the risks
3 undertaken for the payment of costs in the event of an unfavorable outcome, and for the
4 benefits to be received by participating Class Members as a result of her efforts.

5 23. The Court approves a Class Representative service payment to Patricia L.
6 Carter in the amount of \$10,000 for the work performed, the risks undertaken for the
7 payment of costs in the event of an unfavorable outcome, and for the benefits to be
8 received by participating Class Members as a result of her efforts.

9 24. Without affecting the finality of this Order in any way, the Court retains
10 jurisdiction of all matters relating to the interpretation, administration, implementation,
11 effectuation, and enforcement of this Order and the Settlement.

12 25. Nothing in this Order shall preclude any action to enforce the Parties'
13 obligations under the Settlement or under this Order.

14 26. The Parties are ordered to comply with the terms of the Settlement.

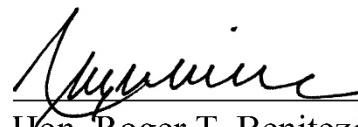
15 27. The Parties shall bear their own costs and attorneys' fees except as
16 otherwise provided by the Settlement Agreement and this Order.

17 28. The Court grants Plaintiffs' Motion for an Order Granting an Award of
18 Attorneys' Fees, Litigation Costs, and Class Representative Service Payments [Dkt. 357]
19 and Motion for an Order Granting Final Approval of Class Action Settlement and
20 Entering Judgment [Dkt. 358].

21 29. The Court hereby enters final judgment in this case in accordance with the
22 terms of the Settlement, the Order Granting Preliminary Approval of Class Action
23 Settlement, and this Order. This action is dismissed with prejudice.

24 **IT IS SO ORDERED.**

25 Dated: March 31, 2017


26 Hon. Roger T. Benitez
27 United States District Judge